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# Supreme Court of the United States

OCTOBER TERM, 1947

No. [redacted] 10

ALEXANDESUS BELLASKUS, *Petitioner*,

v.

L. D. CROSSMAN, OFFICER IN CHARGE,
UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE,
*Respondent*

## PETITION FOR A WRIT OF CERTIORARI

To the United States Circuit Court of Appeals, Fifth Circuit, at New Orleans, Louisiana,

## AND BRIEF IN SUPPORT THEREOF.

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## PETITION FOR A WRIT OF CERTIORARI

**To the United States Circuit Court of Appeals, Fifth Circuit, at New Orleans, Louisiana**

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TO THE HONORABLE, THE SUPREME COURT
OF THE UNITED STATES:

Comes now Alexandesus Bellaskus and respectfully files this petition and would respectfully show unto this Honorable Court:

A.

### Summary Statement of the Matter Involved

The petitioner herein was born in Turkey, immigrated to the United States from Turkey and was lawfully admitted

to the United States on November 15, 1909, on a Turkish passport, and has remained in the United States continuously and uninterruptedly since that date and has no criminal record. Although the alien did not immigrate from Greece and has never been to Greece, he was ordered deported to Greece on October 25, 1935, for violation of Section 19 of the Immigration Act of February 5, 1917. The Immigration Inspector who conducted the hearing made a finding that the alien was a subject and citizen of Turkey. The alien filed application for a writ of habeas corpus in the United States District Court, Houston, Texas, on May 20, 1946, and alleged (1) that the warrant of deportation was functus officio; (2) that petitioner was not accorded a fair hearing by the Immigration Inspector; (3) that there was no evidence to sustain the warrant of deportation; (4) that the issuance of said warrant constituted an abuse of discretion, and that such action was arbitrary and capricious and that the immigration officials had applied an erroneous construction of law; and (5) that the finding of the Immigration Inspector that the alien was born in Turkey and was a citizen and subject of Turkey did not justify removal to Greece and there was no authority for such action.

The Court issued an order TO SHOW CAUSE, to produce the alien in court, and also a properly authenticated record in this case of the proceedings before the Immigration and Naturalization Service. The Government did not file any motion or answer in this cause of any nature until court had convened for the hearing of this matter, said answer having been filed after an adjournment (R. 24). Immediately after the filing of the unsworn answer to the Show Cause Order the Court proceeded to hear part of the matter in controversy and accordingly no opportunity was given counsel for the petitioner to file any further pleadings until his Honor had ruled upon the questions presented in the pe-

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tition for the writ. It is desired to emphasize that no writ of habeas corpus was issued by the Court and there was never a return made to the writ and therefore there was no pleading filed by the Government in this proceeding which could have been traversed. It developed at the hearing that the same alien had filed a petition for a writ of habeas corpus on December 2, 1939, which was dismissed by Hon. T. M. Kennerly, Senior Judge, in the Southern District of Texas (R. 14).

The only allegations contained in the prior petition for a writ were (1) that the alien was not accorded a fair hearing and (2) that there was not sufficient evidence to support the warrant. The trial judge in this subsequent hearing thereupon declined to require the production of the deportation record and refused to consider or HEAR evidence upon any questions but whether by lapse of time the deportation warrant was stale, and in this connection the record of the proceedings were at hand in court, in possession of an Immigration Inspector in attendance upon the trial. In other words, the trial court refused to accord this alien a hearing upon the new grounds raised in this subsequent petition which were (1) the issuance of said warrant constituted an abuse of discretion, and that such action was arbitrary and capricious and that the immigration officials had applied an erroneous construction of law and (2) that it was unlawful to deport the alien to Greece inasmuch as a finding had been made by the Immigration Inspector that he was a citizen of Turkey and had immigrated to the United States from Turkey and had never been to Greece. In this connection motion was made in open court that the record showing the proceedings before the Immigration Service be produced in open court (R. 29). The Court made the observation (R. 33). "The only point I want to hear anything on is the law with reference to the passage of time, and as to it being a bar to the enforcement of

the deportation." His Honor, after declining to require the production of the immigration record and limiting the scope of the hearing to the one point referred to and declining to HEAR any witnesses or evidence or decisions or arguments on the additional points raised in the petition for the writ of habeas corpus, remanded the petitioner to the custody of the Immigration Service for deportation to Greece, from which action appeal was made to the Circuit Court of Appeals, 5th Circuit, at New Orleans, La.

B.

The Circuit Court of Appeals in the majority opinion affirmed the decision of the District Court and in the majority opinion makes repeated reference to a judgment discharging a writ of habeas corpus and apparently basing its opinion upon the fact that the petitioner did not traverse the Government's return. No writ of habeas corpus was issued in this case and there was never a return to a writ to be traversed. As a matter of fact the hearing in this case was so brief that it was completely heard and disposed of a very short time after the Government had filed its unsworn answer to the show cause order.

WHEREFORE, Petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding that Court to certify and to send to this Court for its review and determination, on a day certain, to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 11,786, Alexandesus Bellaskus, Appellant, versus L. D. Crossman, Officer in Charge, United States Immigration and Naturalization Ser-

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vice, Appellee, and that the judgment of said Court may be here reversed, and that Petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your Petitioner will ever pray.

---

ALEXANDESUS BELLASKUS,
*Petitioner*

By C. F. TUCKER,
*Attorney for Petitioner,*
313 Sterling Building,
Houston 2, Texas

# Supreme Court of the United States

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*Respondent*

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## BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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### I.

### The Opinions of the Courts Below

(A) The Trial Court filed no memorandum or opinion.

(B) The opinion in the Circuit Court of Appeals, Fifth Circuit, is not yet officially reported. It is numbered 11,786 on the docket of that Court, styled Alexandesus Bellaskus, Appellant, versus L. D. Crossman, Officer in Charge, United States Immigration and Naturalization Service, Appellee, and is dated December 2, 1947. It appears on pages 45 to 51 of the record.

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II.

## Jurisdiction

(A) Jurisdiction is vested in this Court to issue the writ applied for by virtue of the provisions of JUDICIAL CODE, Section 240, as amended by the Act of February 13, 1925, 43 Stats. 938.

(B) Application is made under the provisions of Rule 38, Section 5(b), RULES OF SUPREME COURT, UNITED STATES.

III.

## Statement of the Case

A rather complete statement has already been made in the petition, which Petitioner adopts and makes a part of this brief.

IV.

## Specifications of Error

(A) The Circuit Court of Appeals, Fifth Circuit, erred in holding that a writ of habeas corpus had been issued by the Trial Court and that it was mandatory upon the Petitioner to traverse the return to said writ.

(B) The Circuit Court of Appeals, Fifth Circuit, erred in holding that there was no offer of proof upon the points raised in the petition for writ.

(C) The Circuit Court of Appeals, Fifth Circuit, erred in holding that the executive branch of the Government may fix the place for the deportation of an alien, notwithstanding the legislative enactments limiting the place of deportation to those enumerated under Section 156 of Title 8, U. S. C.

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(D) The Circuit Court of Appeals, Fifth Circuit, erred in holding that in the United States an alien is not entitled to a hearing by a Judge of a United States District Court upon matters so very essential to his life, liberty and happiness, just because a Judge who heard a prior petition for a writ of habeas corpus declined to issue such a writ where the alien in the subsequent writ makes sworn allegations showing that he is entitled to his release and which matters were not heard or before the Court in the prior application.

## V.

## Argument

### *Point A*

The record (R. 8), shows that the Trial Judge merely issued "an order to show cause" and no writ of habeas corpus was issued. In fact the order was to show cause why a writ of habeas corpus should not issue. Accordingly, there was no burden on the Petitioner to challenge the Government's answer. It was merely an unsworn general denial and it was not filed until midway in the proceedings and the hearing was concluded before any answer thereto could be filed. However, the Government merely prayed (R. 11) that respondent be discharged from the Court's order, and the attorney for the Petitioner would not know how to prepare a traverse to the said answer. The Petitioner in his application for a writ had set forth the reasons why he was being deprived of his liberty by deportation to Greece and alleged the invalidity of the deportation warrant. The Government, after announcing ready, and after an adjournment of Court, merely filed a motion to dismiss the petition and by its answer alleged that the warrant was valid. The issue before the Court was thereby joined and the matter proceeded to

trial. If as a matter of fact a writ of habeas corpus had been issued by the Court and a return filed thereto by the Government, the strict rule of pleading may have required that the Petitioner traverse the return. In this connection it is desired to respectfully invite the Court's attention to the fact that all of the allegations of the Petitioner are under oath. To deprive the Petitioner of a hearing in court when he is present with his attorney upon technical grounds of this nature seems to me to be a miscarriage of justice and to resort to these technical phases of pleading where the very life of a man is involved and to say that he was not entitled to a hearing in one of the courts of the United States of America seems to be depriving a man of his right to his life and liberty without due process of law. It is conceded that this may not have been an important matter to the Trial Judge, or to a very energetic and capable attorney for the Government, or for that matter to the attorney for the Petitioner, but when a man is in court contesting an order for his deportation to Greece, a country in which he has never lived, from which he did not immigrate, in which he has no relatives, and when such order requires that he be bodily removed from the United States, where he has lived for a continuous period of 38 years, or since he was a young man, a man who has never been arrested or charged with any violation of law in his life, then, gentlemen, it becomes an important matter to him, and I respectfully submit to this Honorable Court that such a man, despite he be a mere alien, is entitled to a HEARING before any Judge in this land.

### *Point B*

The record (R. 29), and preceding pages of the transcript record shows that the Trial Court refused to require the production of the immigration record, although it was in court and that he declined to hear witnesses, evidence or ar-

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gument upon any point except as to whether the warrant of deportation, which was issued in 1935, had expired by operation of law. When counsel for Petitioner made a motion that the record be produced in court and endeavored to call witnesses to the stand and endeavored to argue the points raised in the petition for the writ, which had not previously been raised in the prior petition for a writ of habeas corpus, I respectfully submit that they exhausted every remedy that an attorney has in court and although they had made ample preparation to support the points raised in the petition, they could do nothing more than respectfully offer their evidence, decisions, and arguments, and when His Honor declined to hear the same, I know of no further action that could be taken by the attorney for the Petitioner except to appeal, and at this time it is the only remedy we have to appeal to the highest Court of the land, and to ask you gentlemen to require the District Court for the Southern District of Texas to accord this alien a hearing before he is placed on a ship and removed to a country of which he is not a citizen and I urge that before this man is forcibly deported from the United States, which is tantamount to a life sentence to him, that he be accorded a hearing in a Court of the United States, and I believe leaving the interest of the alien out of the matter entirely, that it is bad public policy to send an alien out of this country, who has been law abiding, to another land and permit him to go to that place and say that he was deported from this country without a hearing, and I submit that it is contrary to everything America stands for and that it is the greatest thing that has been preserved in this country and that it distinguishes this country from the judicial proceedings had in Russia and other countries, and it is why, gentlemen, that so many aliens seek to come to this country and I urge you to maintain that character of jurisprudence in the United States.

***Point C***

The statute fixes the place for deportation thusly: "The deportation of aliens provided for in this chapter shall, at the option of the Attorney General, be to the country whence they came or to the port at which such aliens embarked for the United States * * * or if such aliens are held by the country from which they entered the United States not to be subjects or citizens of such country and such country refuses to permit their reentry, or imposes conditions upon permitting reentry, then to the country of which such aliens are citizens or subjects, or to the country in which they resided prior to entering the country from which they entered the United States." 8 U. S. C. A., Sec. 156. The language is mandatory: "shall." The options are, 1. the country or port of departure for the United States; 2. if the country of departure disclaims the alien and blocks reentry, then the country of true citizenship; or 3. the country of last residence before entering the country of departure. It is not lawful to deport an alien to a country of which he is not now a citizen or subject and in which he has never resided and from which he did not depart to the United States. The question can be raised on habeas corpus, deserves serious consideration, and is to be answered by the political situation of the countries at the time of the hearing. MENSEVICH v. TODD, COMMISSIONER, 264 U.S. 134.

As stated by JUDGE SIBLEY in the dissenting opinion: "This question was not decided by Judge Kennerly in the habeas corpus hearing before him in 1939, and should not have been refused a hearing in the present case when raised for the first time. The strict rules of res judicata do not apply to habeas corpus."

The Supreme Court has repeatedly held that the place of deportation of an alien is subject to judicial review and that

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it is not entirely discretionary with the Attorney General or any of his subordinates. BLUMEN v. HAFF, 56 S. Ct. 248, 296 U.S. 644, and there are numerous circuit court decisions upon this subject. In this connection it had become a practice for the Government to deport to England during the war those aliens whose countries had set up temporary capitals in England, and the Courts all throughout the United States properly ruled that this was contrary to Section 156 of Title 8. The statute is plain upon this point and there can be no misconstruction of the same.

### *Point D*

The strict rules of res judicata do not apply to habeas corpus. LOISEL v. SALINGER, 265 U.S. 239; WONG DOO v. UNITED STATES, 265 U.S. 239. It is our position that the rules of res judicata do not apply in this case even to the points that were raised in a prior petition for a writ before Judge Kennerly in 1939. To hold otherwise would deprive a Petitioner from taking advantage of decisions that have been rendered subsequently by our Supreme Court of the United States, or laws that have been passed by our Congress. Indeed, the fact that a petition for a writ of habeas corpus was denied in 1939 affords no basis for the position of a court saying in 1947, eight years later, that I will not hear this petition because it was heard eight years ago by another Judge, even upon the points raised in the prior petition.

During the interim which intervened in this case a World War has been fought, conditions in all countries were changed, the laws have been amended with reference to deportation and the conditions in all of the countries involved have undergone great changes and indeed decisions have been rendered all over the United States based upon these new

conditions. For the Court to take the position that I will not hear this case because it was heard eight years ago, seems to me, while quite complimentary to the Judge who heard the prior petition, to limit and restrict the use of a petition for a writ of habeas corpus more than was ever intended by the legislative branch of this Government, and it is respectfully submitted that if counsel can show at this time that the hearing was unfair or there was no evidence to support the warrant of deportation, or that the Department has applied an erroneous construction of law, that we would be entitled to have a writ issued. Indeed, the very least I believe the Petitioner is entitled to under the spirit of the laws in this country is a hearing and if there are decisions, such as STRENCH v. PEDARIS, 55 F. (2d) 597, C.C.A. 10th Cir., which hold that the warrant of deportation in this case is invalid, I think after a lapse of eight years from the previous petition that we should be able to show that to a Court and be heard. Furthermore, if the United States Department of Justice, since the previous writ was denied in 1939, has enunciated new rules and practices which do not require the deportation of an alien under the circumstances in this case, unless it is shown that he profited financially, I think we should be permitted to show that to a Court and to have a hearing. I as much as any attorney have the deepest and greatest respect for our courts, and particularly for our courts here in Houston, and the sanctity of such courts and for the preservation of the Court's time and energy, but the principle involved here far exceeds those considerations. Here, we have an alien in court about to be deported to a strange country. Certainly, no matter how busy the Court is, that alien is entitled to be heard by that Court, and in this case I think the sanctity of the law is above the sanctity of the Court.

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## Conclusion

It is, therefore, respectfully submitted that the dissenting opinion of his Honor, JUDGE SIBLEY, enunciates the correct principle of law in this case and it is respectfully submitted that the main question presented to this Honorable Court is whether or not in the United States at this time an alien who avails himself of a petition for a writ of habeas corpus and presents himself in court, with a full record of the proceedings had before the immigration authorities available in court, is entitled to a HEARING and it is sincerely and honestly believed that this case is one calling for the exercise by this Court of its supervisory powers in order that the judgment of the Circuit Court of Appeals, Fifth Circuit, be reviewed and the case remanded to the trial court for trial in accordance with the principles of law, and to that end, a writ of certiorari should be granted and this Court should review the decision of the Circuit Court of Appeals, Fifth Circuit, and finally reverse it.

Respectfully submitted,

By_____

C. F. TUCKER,
*Counsel for Petitioner*